IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 693 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC THROUGH GENERAL MANAGER - Appellant(s)
Versus
UMARSHA RAHEMANSHA & 2 - Defendant(s)

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Appearance :
MR HARDIK C RAWAL for Appellant(s) : 1,
MR PREMAL S RACHH for Defendant(s) : 1 - 2.
FRESH NOTICE REQD(N) for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/10/2006

ORAL JUDGMENT

1. The Gujarat State Road Transport has filed this appeal under Section 110 of the Motor Vehicles Act [hereinafter referred to as the “Act”]. They have

challenged the judgment and award made by the MACT, Jamnagar, in MACP No. 29/1982 dated 19th April, 1983. By the said award the Tribunal has awarded Rs.50,000=00 to the present respondents together with interest at the rate of 6% per annum from the date of the application till realization and full costs.

2. These proceedings arose as a result of the accident which took place on 4th September, 1981. The deceased boy aged 15 years, happened to be the son of respondents no. 1 and 2. On the fateful day he was standing on the edge of the road, holding certain bottles of cold drinks to be sold. At that time respondent no. 3 drove the vehicle i.e., passenger bus bearing registration no. GTR 8316, negligently and rashly and knocked down the boy. The bus ran over him. He died instantaneously. The parents i.e., respondents no. 1 and 2 therefore, approached the aforesaid Claims Tribunal for obtaining compensation. Before the Claims Tribunal the claim was made of Rs.50,000=00. It was based on the fact that the deceased even at that age was earning Rs.10/- per day and also he was generating some income by selling aerated water. He was getting commission on the sale of such bottles. Thereby he generated additional income of Rs.3.50 per day. According to respondents no. 1 and 2,

the deceased was getting income of Rs.350/- per month. The Claim Petition was resisted by the appellant by filing written statement at Exh. 17. The appellant denied that the vehicle was being driven by respondent no. 3 negligently and rashly. According to it, the deceased tried to climb on the window of the running bus, probably with a view to attract the customers. In the process he fell down and got crushed under the wheels. It was also denied that the deceased was earning Rs.10/- per day and also getting extra income of Rs.3/- per day.

3. The Tribunal on the basis of the evidence that was led before it by the parties, oral as well as documentary, held that respondent no. 3 was rash and negligent and on account of his negligence, the accident took place. It was also held that respondent no. 3 was driving the vehicle of the appellant as its employee and, therefore, the appellant was vicariously liable to pay compensation to the claimants i.e., respondents no. 1 and 2. The Tribunal held that there was reliable evidence to conclude that the deceased was earning Rs.10/- per day and assessed the monthly income at Rs.300/- per month and annual income of Rs.3,600=00. The Tribunal also applied multiplier of 15 years and held that the parents of the deceased were entitled to receive Rs.54,000=00 plus

Rs.5,000=00 for loss of expectation of life, in all Rs.59,000=00. But since the claim was of Rs.50,000=00, the Tribunal awarded Rs.50,000=00. It is this award which is under challenge in this appeal.

4. I have heard Mr. Hardik Raval learned advocate for the appellant and Mr. Premal Rachh learned advocate for respondents no. 1 and 2. It is submitted by Mr. Raval that the award is on higher side. He has further submitted that respondents no. 1 and 2 are the parents of the deceased, unmarried boy and, therefore, they are entitled to receive one-third of the amount of compensation that may be assessed by the Tribunal. As against that Mr. Rachh has submitted that there is no straight jacket formula for deduction of two-third from the income of the deceased to arrive at a figure of loss of dependency benefit. He has placed reliance on certain decisions of the Apex Court, in support of his contention. Mr. Rachh has also placed reliance on two decisions of this Court to substantiate his contention with regard to deduction of two-third from the income of the deceased.

5. I have given careful consideration to the rival submissions. I have also gone through the record of the

case including the oral evidence. So far as the aspect of negligence is concerned, there is ample evidence on record to show that the deceased was not at fault. The evidence of Hanif Suleman which is at Exh. 29 shows that he was an eye witness to the accident. It is stated that at the time of accident he was attending to his vending. The accident took place at about 11:15 a.m. The deceased was standing at a distance of about 4 to 5 ft., from his handcart. He saw that the S.T. Bus all of a sudden knocked down the deceased and he was crushed underneath. According to him the S.T. Bus was driven by the driver at an excessive speed. The deceased died on the spot. In the cross-examination certain suggestions have been made to see that it was the deceased who was negligent, but these suggestions have been flatly denied by the witness. It, therefore, clearly appears that it was respondent no. 3, driver of the S.T. Bus who was negligent. On this count, I do not find any error having been committed by the Tribunal.

6. The second question that is required to be decided is what is the loss of dependency benefit to respondents no. 1 and 2. The deceased was their son. He was aged about 15 years at the time of his death. The evidence of respondent no. 1 – father of the deceased

shows that the deceased was working as a hotel boy in the hotel of one Kashamsha. He used to earn Rs.10/- per day. It is submitted by him that the deceased used to come to hotel at 6:00 a.m., and he usually worked their till 11:00 a.m., and then again at 12:00 p.m., and remained till 8:00 p.m. It is further stated that during off hours, the deceased used to sell cold drinks to the bus passengers and used to get commission of 10 paise on each bottle. Thus, he used to earn Rs.3=00 to 3.50 paise per day. According to the witness, the deceased used to earn about Rs.13=00-13.50 paise per day. In the cross-examination the witness has stated that for the death of his eldest son, who had also died in a vehicular accident, he had received Rs.25,000=00 by way of compensation. He has denied that in that case he had stated in the evidence that the deceased of the present case namely Daudsha was earning Rs.50=00 to Rs.75=00 per day. He has reiterated his version that he used to earn Rs.10=00 per day. Kashamsha Siddisha, the hotel owner has been examined in the proceedings and his evidence is at Exh. 27. He has stated that he had his tea as well as juice handcart near the Dhrol S.T. Station. Deceased Daudsha was working as a waiter. He used to pay him RS.10=00 per day. He worked between 6:00 a.m., and 10:00 a.m., and again between 2:00 a.m., and 8:00 p.m. He has

stated that the deceased was about 15 years of age. This witness has also supported the version of respondent no. 1, that during off hours, the deceased used to sell aerated water. In the cross-examination he has stated that from the beginning he was paying the deceased wages at the rate of Rs.10=00 per day. According to him, other boys doing the same work are being paid Rs.12=00 per day. However, these boys do not sell the cold drinks like the deceased. Thus, the evidence of these two witnesses make it clear that at early age of 15 years, the deceased generated some income for the family. He appeared to be hard working boy. Since, both the witnesses have stated that right from the early morning at 6:00 o'clock, he used to report for duty and worked till 10:30 – 11:00 a.m., and thereafter from 2:00 p.m., onwards till 8:00 p.m., and during off hours, he used to sell cold drinks to the passengers. It is, therefore, clear that the deceased remained at the bus stand right from early morning till late night. There is no reason to disbelieve this version of the witnesses. It is, therefore, duly proved by respondents no. 1 and 2 that the deceased generated income of Rs.13:00 to 13.50 per day. The said amount was given for the maintenance of the family. The Tribunal has taken the note of this fact. However, it has come to the conclusion that even if the income of the

deceased is taken at Rs.10=00 per day without the future increase being taken into consideration, the parents would be entitled to receive the claim amount fully. The Tribunal has, therefore, not considered the aspect that the income of the deceased would not have been remained static, but it would have increased with the passage of time. According to Mr. Raval, there is no evidence to substantiate the say of the parents that the deceased earned about Rs.13.50 paise per day. However, this contention cannot be accepted in view of the evidence of respondent no. 1 as well as Kashamsha. As observed by me above, the deceased was very hard working and he worked almost the entire day right from 6:00 a.m., till 8:00-8:30 p.m., with some short breaks to have his meals etc. He is aged 15 years. It is, therefore, not unreasonable to expect that with the passage of time the deceased could have substantially increased his income. Even considering the money value of those days, there is no doubt in my mind that within short time, the deceased would have started earning Rs.22=00 to 25=00 per day. However, even if the average income is taken at Rs.20=00 per day, the deceased would have earned RS.600=00 per month i.e. Rs.7,200=00 per annum. Considering the age of the parents i.e., respondents no. 1 and 2, namely 52 years and 45 years respectively, and the age of the

deceased 15 years, multiplier of 15, appears to be reasonable and the Tribunal has not committed any error in holding that in the instant case, multiplier of 15 years could be applied. The loss, therefore, could be assessed at Rs.1,08,000=00. It is submitted by Mr. Raval that since there is neither any appeal nor any cross objections filed by respondents no. 1 and 2, the loss of future income determined by the Tribunal cannot be disturbed. This argument cannot stand because as an appellate court, I am within my bounds by virtue of Order 41 Rule 33 of the Civil Procedure Code, to pass or make other decree or the order as the circumstances of the case, may require. It is true that if the facts of the case do not warrant, it may not be permissible for me to award more than the claim made before the Tribunal. But if the award remains within that limit, this Court can change the finding of the Tribunal without there being any appeal or cross objections to challenge such findings. If the average income of the appellant is Rs.20=00 per day, the annual income would be Rs.7,200=00 multiplied by 15 and the amount would come to Rs.10,08,000=00 and that would be the income of the deceased, had he not met with the untimely death. But the next important question is whether this could be loss of dependency and the answer would be no. It is an admitted

fact that the deceased was a bachelor. He was aged about 15 years. With the passage of time, he would have grown up, would have married and would have got his own family. In such circumstances, it is necessary to follow the ratio laid down by this Court in the case of **Somabhai Vajabhai & Anr., v. Babubhai Bhailalbhai & Ors., reported in XXIII (1) G.L.R., at pg.785**. It is held therein that since the deceased was unmarried, he would have got married in due course and would have spent two-third income for the maintenance of his family and one-third would have been spent for parents. In the said case, multiplier of 16 years was applied, considering the age of the deceased i.e., 20 years and the age of the parents who were in their 40's. Similarly in the decision rendered in the case of **Smt. Rafia Sultan widow of Mirza Sultan Ali Baig & Ors. v. Oil and Natural Gas Commission, reported in 1985 (2) G.L.R., pg. 1315**, same view has been taken by the another Division Bench. Of course, Mr. Rachh has relied on the decision rendered by the Apex Court in the case of **Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 GLHEL SC 8739**. In that decision though the case of deceased bachelor was the subject matter for compensation, no principle of law has been enunciated by the Apex Court. In that view of the matter, it cannot be considered by this Court and it does not

render any help to respondents no. 1 and 2. Similarly another decision relied on by him which is rendered in the case of **Gyanchand Jain v. Parmanand reported in 2003 GLHEL SC 10291.** The Apex Court has not dealt with this aspect and no law has been even impliedly laid down to overrule decision of this Court rendered above. In view of the same, it is difficult for me to accept the submission of Mr. Rachh. Therefore, from the amount of Rs.1,08,000=00 two-third has to be deducted and one-third is to be awarded to the parents, and that would bring the amount of RS.36,000=00 as loss of dependency benefit. So far as the compensation for loss of expectation of life is concerned, the Tribunal has awarded Rs.5,000=00 that is also slightly on lower side and it is required to be increased to Rs.2,000=00 i.e. Rs.7,000=00. This will bring the amount to Rs.43,000=00 which could have been awarded to respondents no. 1 and 2. There is a difference of Rs.7,000=00. However, time and again, this Court has refused to interfere with amount on the ground of smallness of the amount. The accident has taken place in the year 1980 and the appeal is being disposed of on 4th October, 2006. This Court has, therefore, no reason to interfere and disturb the award of the Tribunal for a meager amount of Rs.7,000=00. There is an additional factor which may require this Court not to interfere with

the Tribunal's award and that is that the deceased was hardly 15 years of age. The parents, therefore, had considerably long time to enjoy the full dependency benefit, at least for next ten years, but they have been deprived of the same. In the case of this, considering the overall circumstances on record, the award of the Tribunal appears to be just and proper and no interference is required by this Court. Hence, the appeal is dismissed with costs.

R & P if any, to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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